



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/158729

PRELIMINARY RECITALS

Pursuant to a petition filed July 01, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 21, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Silvestre

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a Notification of FoodShare Overissuance dated July 16, 2013. It was mailed to Petitioner at [REDACTED]. It informed Petitioner that she had been overissued FoodShare benefits in the amount of \$2081.00 for the period from July 13, 2012 to April 30, 2012. The reason for the overissuance was that Petitioner was living in the home of her father at

the time of a July 2012 application for FoodShare but his income was not reported. With it the household was over the FoodShare income.

3. The overpayment notice did contain appeal instructions that informed Petitioner that an appeal had to be filed within 90 days of the date of the notice.
4. Petitioner filed this appeal on July 1, 2014.

DISCUSSION

The Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. See *FoodShare Wisconsin Handbook (FSH)*, §6.4.1 and 7 CFR §273.15(g).

Petitioner did receive the overpayment notice referred to at Finding # 2 and went to the agency to inquire as to the allegation and testified that she was told her case was closed and there was nothing they could do about it so she did not appeal.

Nonetheless, the Division of Hearings and Appeals, by law, lost authority to make a decision here after the appeal deadline passed so I must conclude that the Division of Hearings and Appeals does not have authority to make a determination on the merits of this matter as Petitioner did not timely file her appeal.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have authority to make a determination on the merits of this matter as Petitioner's appeal is not timely.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of September, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on September 19, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability